88-2101

No.

Supreme Court, U.S.
FILED
JUN 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

WALTER F. WESSENDORF, JR.,

Petitioner,

V.

SUPREME COURT OF VIRGINIA
and
ALFRED D. SWERSKY,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

WALTER F. WESSENDORF, JR.
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Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

Did the Supreme Court of Virginia violate, deprive and deny Petitioner's Fourteenth Amendment rights to constitutional due process and equal protection of the laws of the State of Virginia by denying Petitioner's November 11, 1988 petition for a writ of mandamus compelling the Respondent Swersky to sign Petitioner's September 26, 1988 written statement of facts, to stay all proceedings, and to compel the Respondent Swersky to disqualify and recuse himself, and by imposing sanction and costs against Petitioner?

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Petitioner, Walter F. Wessendorf, Jr. (hereinafter in the first-person singular), respectfully prays that this Court grant a writ of certiorari to review the order of the Respondent Supreme Court of Virginia, entered January 27, 1989, which denied my November 11, 1988 petition for a writ of mandamus compelling the Respondent Swersky to sign my Septem-

ber 26, 1988 written statement of facts for the record on appeal in Arlington Circuit Court Chancery Case No. 36597 to the Court of Appeals of Virginia, to stay all proceedings in Case No. 36597, to stay all appellate proceedings in the Court of Appeals, and to compel Swersky to disqualify and recuse himself forthwith from Case No. 36597.

JURISDICTION

The order of the Supreme Court of Virginia was entered April 21, 1989 denying my February 13, 1989 motion for rehearing of its said January 27, 1989 order. This petition for certiorari is filed within 90 days of the April 21, 1989 date. The Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

FOURTEENTH AMENDMENT, SECTION 1, UNITED STATES CONSTITUTION: "[N]or shall any State deprive any person of life, liber-

ty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.".

STATEMENT OF THE CASE

That in Arlington Circuit Court Chancery Case No. 36597, my former spouse, Teresa D. Wessendorf (hereinafter shortened to "my spouse"), instituted a divorce proceeding against me, and to which I thereafter cross-billed on three counts to wit: annulment on the grounds of a number of frauds, divorce on the ground of desertion and cruelty, and annulment on the ground that she had been a prostitute prior to the marriage.

In Case No. 36597, all four Arlington Circuit Court judges formally disqualified themselves for misconduct against me and deprivation of my constitutional rights, and Chief Justice Carrico of the Supreme Court of Virginia designated the

Respondent Swersky, a Circuit Court judge of the Circuit Court of Alexandria, Virginia, to sit.

Virginia's canons of judicial conduct prohibit a judge from conferring ex parte with counsel. Swersky initially withheld the fact that Swersky had conferred ex parte with my spouse's attorney, Vincent McAlevy, but later on Swersky had to admit it. A bill for legal services by Catherine Burns, another attorney representing my spouse, confirms that Swersky again conferred ex parte several times. These facts were withheld from me for over 10 months. Likewise withheld from me for over 10 months was the fact that Catherine Burns had conferred with the Hearing Commissioner designated to hear the matter.

Catherine Burns submitted to Swersky a bill for legal services rendered by a Ken McFarlane Smith to my spouse with

the expectation that Swersky would order me to pay Smith's bill or half of it despite the facts that Smith had theretofore testified under oath before Swersky and in Catherine Burns' presence and hearing that Smith does not handle divorce matters, that Smith never represented my spouse, and that Smith did not render any legal services for my spouse; and Catherine Burns had my spouse execute an affidavit before Swersky that my spouse was legally obligated to pay the fraudulent bill rendered by Smith.

In open court before Swersky, Catherine Burns stated that she was under no obligation, as a member of the Virginia Bar, to inform Swersky of any perjury or fraud committed by my spouse on the court because the purpose of the attorney-client relationship was for Catherine Burns to shield and protect my spouse when my spouse committed fraud and perjury upon

Swersky's trial court.

Catherine Burns had my spouse execute other materially false affidavits before Swersky which were later contradicted by my spouse's sworn testimony before Swersky.

Swersky went along with the tactics of Catherine Burns in repeatedly failing to have my spouse truthfully and completely respond to discovery by frivolous objections interposed by Burns. Burns later admitted to me that she had lied in open court to Swersky on material matters with regard to material testimony given by my spouse's former attorney, Vincent McAlevy.

That Swersky not only denied my motion to disqualify Catherine Burns from further representing my spouse on for reason of Burns' unprofessional conduct, but Swersky refused to direct Burns to take the stand to testify on such matters,

and further order me to pay Catherine Burns $520.00 attorneys fees for my purported frivolous motion, and terminated discovery on my part with the result that I was unable to establish proof of my cross bill of complaint before the Hearing Commissioner.

Presumably, threatening or intimidating an official federal witness in the course of an official federal investigation is punishable by fine of not more than $250,000 or imprisonment for not more than 10 years, or both such fine and imprisonment. In October 1987, the Office of Federal Investigations officially launched an official investigation with respect to my former spouse who had, unbeknownst to me, accepted a position with a U.S. government agency and had been placed on probationary status; and the Office of Federal Investigations officially contacted me as an official feder-

al witness and requested detailed information from me about my former spouse. In open court on November 9, 1987, Swersky threatened me with retaliation if my cooperation with such official federal investigation resulted in my spouse being fired from her federal government position. Intimidated by Swersky's threats, I wrote the U.S. Solicitor's office for an ethics opinion whether it would be ethically proper for me to simply decline to provide the Office of Federal Investigations any information about my spouse. The official federal response from the U.S. Solicitor was that I had to reveal fully any knowledge or evidence on my spouse to the Federal Office of Investigations. In March 1988, I requested that Swersky recuse himself for threatening me with retaliation if I cooperated with such official federal investigation, and further requested that Chief Justice Car-

rico of the Supreme Court of Virginia appoint another circuit court judge in place and stead of Swersky. Swersky refused to recuse himself and thereafter entered a Final Decree of Divorce over my objections.

Throughout Swersky's designation in Chancery Case No. 36597, I repeatedly requested Swersky to disqualify and recuse himself for reasons of Swersky's continued judicial misconduct against me, Swersky's continued violation of my constitutional rights and Swersky's partiality.

The Rules of the Supreme Court of Virginia provide, in lieu of transcripts, a written statement of facts becomes part of the appellate record and mandatorily requires the trial judge to sign the written statement of facts if there is no objection filed thereto by any party. In the case at bar, I followed the pre-

scribed procedure with respect to my proposed written statement of facts and my former spouse made no objection whatsoever thereto, but on October 13, 1988 Swersky refused to sign my written statement of facts, and from that 10/13/88 order of refusal I timely appealed to the Court of Appeals of Virginia.

On November 11, 1988, I petitioned the Supreme Court of Virginia for a writ of mandamus compelling Swersky to sign my September 26, 1988 written statement of facts, to stay all proceedings, and to compel Swersky to disqualify and recuse himself. All the allegations supporting the relief I sought were sworn to under oath and under penalty of perjury.

In its January 27, 1989 order (Appendix A), the Supreme Court of Virginia dismissed my mandamus petition and awarded sanctions and costs of $150 to Swersky without specifying the ground therefor

or making any finding with respect thereto despite the fact that Swersky interposed no sworn affidavit either denying or refuting any of the sworn allegations set forth in my November 11, 1988 petition, nor did the Supreme Court of Virginia even bother to hold a hearing thereon.

On February 13, 1989, I moved before the Supreme Court of Virginia for rehearing of its January 27, 1989 order. By its April 21, 1989 order, the Supreme Court of Virginia denied my February 13, 1989 motion for rehearing.

STAGES IN PROCEEDING AT WHICH FEDERAL QUESTIONS WERE RAISED

The federal questions of the violation, deprivation and denial of my constitutional due process, and equal protection and application of the laws of the State of Virginia, were specifically raised in my September 26, 1988 written state-

ment of facts, my November 11, 1988 petition for writ of mandamus, my December 7, 1988 papers filed with the Supreme Court of Virginia and my February 13, 1989 motion for rehearing; however, the Supreme Court of Virginia did not pass upon any of the federal questions raised.

ARGUMENT

THE SUPREME COURT OF VIRGINIA VIOLATED, DEPRIVED AND DENIED MY FOURTEENTH RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAWS OF THE STATE OF VIRGINIA BY DENYING MY NOVEMBER 11, 1988 PETITION FOR A WRIT OF MANDAMUS

CONCLUSION

For all of the foregoing reasons, the petition for certiorari should be granted; the January 27, 1989 order of the Supreme Court of Virginia should be reversed; and the Supreme Court of Virginia should be directed to grant me the relief I sought in my November 11, 1988 petition for writ of mandamus.

Respectfully submitted,

WALTER F. WESSENDORF, JR.
P.O. Box 15846
Crystal City Station
Arlington, Virginia 22215
(703) 892-0110

Attorney for Petitioner

APPENDIX A

January 27, 1989 Order by the

Supreme Court of Virginia

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 27th day of January, 1989.

In Re: Walter F. Wessendorf, Jr.,

Petitioner

Record No. 881238

Upon a Petition for a Writ of Mandamus

On consideration of the petition of Walter F. Wessendorf, Jr. praying that a writ of mandamus do forthwith issue, to be directed to the Honorable Alfred D. Swersky, Judge of the Circuit Court of Arlington County, the motion to dismiss, a motion for sanctions and memorandum of law in support of respondent's motions filed in answer on behalf of the respondent judge and the petitioner's response thereto, the Court is of opinion that mandamus does not lie in this matter and that the writ of mandamus should not

issue as prayed for. It is therefore ordered that the said petition be dismissed and that the respondent recover of the petitioner, as a sanction, $100.00, plus costs, pursuant to Code § 8.01-271.1.

A Copy,

Teste:

David B. Beach, Clerk

By:

(s)

Deputy Clerk

Respondent's costs:

Attorney's fee $50.00

Teste:

David B. Beach, Clerk

By: (s)

Deputy Clerk

APPENDIX B

April 21, 1989 Order by the

Supreme Court of Virginia

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of April, 1989.

In Re: Walter F. Wessendorf, Jr.,

Petitioner

Record No. 881238

Upon a Petition for Rehearing

On consideration of the petition of the petitioner to set aside the judgment rendered herein on the 27th day of January, 1989 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

(s) David B. Beach

Clerk